(3)

[redacted]

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH.

Criminal Appeal No. 144 /2001.

APPELLANT :- (In Jail Custody) Kawasi Budhram S/o Dewa Muriya, aged 29 years, resident of Gudse, Mitgundipara, P.S. Kate Kalyan, District Dantewada, Bastar(Chattisgarh).

VS

NON APPLICANT :- State of Chattisgarh, through P.S. Kate Kalyan, District Dantewada Bastar.

CRIMINAL APPEAL UNDER SECTION 374(2) CR.P.C.

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 144 **सन् 2001**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH*: -

HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

21-12-2006

Shri V.P. Gupta, counsel for the appellant.

Shri G.D. Vasvani, Govt. Advocate for the State/ respondent.

Oral Judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 1-1-2001 passed by 2nd Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.77/2000 whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 1 year.

Case of the prosecution, in brief, is that on 6-10-99 accused Budhram attacked Kawasi Bheema with axe on his neck, as a result of which Kawasi Bheema died on the spot. The matter was reported by eyewitness PW-1 Kawasi Bandi in the Police Station Katekalyan, on which Station House Officer registered crime under Section 302 of the I.P.C. under Ex.-P/1, left for scene of occurrence, prepared inquest (Ex.-P/2) on the body of Kawasi

P.T.O.

XI-HC-78

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bheema. The body of the deceased was sent for postmortem examination to the Primary Health Centre, Katekalyan where Dr. A.D. Bara conducted postmortem, prepared postmortem report Ex.-P/4 and opined that injury was ante-mortem in nature. Skull bone and mandible bone were cut. There were two incised wounds, first on the right cheek in the size of 2" x 1" x 3" and second on left temporal region in the size of 2" x 1" x 3". There was fracture of temporal bone. The deceased died on account of injury, excessive bleeding and damage to the brain. The death was homicidal in nature.

After usual investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Dantewara, who, in turn, committed the case to the Sessions Judge, Jagdalpur from where learned 2nd Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 7 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and has been implicated in a false case.

Learned Additional Sessions Judge after hearing respective counsel convicted and sentenced the accused/appellant as aforementioned.

P.T.O.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard learned counsel for the parties.

Shri Gupta has not disputed homicidal death of Kawasi Bheema. Apart from that, from the evidence of eyewitnesses namely PW-1 Kawasi Bandi, PW-2 Kawasi Somdi and the medical evidence of PW-6 Dr. A.D. Bara, it is established that the death of Kawasi Bheema was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, learned counsel for the accused/appellant argued that no independent eyewitness has been examined and all the witnesses are related witnesses. Confession is said to have been made before Panchayat whereas, Panchayat members have not been examined.

We have perused the evidence. It is true that PW-1 Kawasi Bandi is related to the deceased, but at the same time, he is related to the accused also. PW-2 Kawasi Somdi is the wife of the deceased whose presence in the house cannot be denied. The crime was committed in the house of the deceased, therefore, there is no occasion that other independent eyewitnesses might have been present. There is no suggestion in cross-examination of these witnesses that some other witnesses were present and those witnesses have not been examined. PW-1 Kawasi Bandi and PW-2 Kawasi Somdi have categorically stated in their evidence that at about 12 noon when the deceased was at the residence, the accused came with axe and attacked him on his

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मामला क्रमांक Cr.A. 144/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

neck, as a result of which the deceased fell down and died. There is nothing in cross-examination of these witnesses to discredit the evidence of these witnesses. Even PW-3 Kawasi Aayatu and PW-4 Mandvi Kosa have categorically stated that Panchayat was convened in connection with the murder of the deceased. The accused also appeared before the Panchayat and in that Panchayat, the accused confessed that he has committed murder of the deceased. Therefore, it cannot be said that these witnesses were not present in the Panchayat. Two witnesses who were present in the Panchayat before whom confession was made have been examined, therefore, we do not find any substance in the argument of learned counsel for the accused/appellant.

In the result, we do not find any illegality or infirmity in the judgment of the trial Court convicting the accused. The appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.

34,07